

EXHIBIT A

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 GEO-GROUP COMMUNICATIONS,
4 INC.,

Plaintiff,

5 v.

15 CV 1756 (KPF)

6 VIPIN SHAH ,

7 Defendant.

8 -----x

9 New York, N.Y.
10 November 19, 2018
4:06 p.m.

11 Before:

12 HON. KATHERINE POLK FAILLA

13
14 District Judge

15 APPEARANCES

16 LOREE & LOREE
Attorney for Plaintiff
17 BY: PHILIP J. LOREE , JR.

18 VIPIN SHAH
Pro Se Defendant
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(Case called)

MR. LOREE: Philip J. Loree, Jr.

Counsel for plaintiff. Loree & Loree.

MR. VANJANI: Giovind Vanjani, President Geo-Group
Communication.

THE COURT: Good afternoon to both of you. You're
welcome to be seated.

MR. VIPIN SHAH: Vipin Shah.

MR. VISHAL SHAH: I am Vishal Shah, his son.

THE COURT: Thank you very much.

The younger Mr. Shah you are here, sir, to aid your
father if he needs help in communicating with me this
afternoon?

MR. VISHAL SHAH: Yes.

THE COURT: I understand. I just want to make sure
you're very near a microphone so that we can hear you.

MR. VISHAL SHAH: Sure. Is this better?

THE COURT: It is, sir. Thank you.

Mr. Loree, let me begin with you, sir. I received a
and docketed very recently a letter from Mr. Shah. Did you
receive that letter as well, sir?

MR. LOREE: From Mr. Shah recently?

THE COURT: Yes, sir.

MR. LOREE: I don't believe I have received it. It's
possible if it came in over the weekend, may it be in my

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1 e-mail?

2 THE COURT: I saw it this morning so let me do this,
3 please, just so that we all can have it. It's only about a
4 page long. So I am going to bring it up and just print it to
5 my deputy's computer.

6 MR. LOREE: Thank you, your Honor.

7 THE COURT: Of course.

8 And Mr. Vipin Shah you have seen the letter that you
9 sent to me on the 13th of November, yes, sir?

10 You recall the letter that you sent to me?

11 MR. VIPIN SHAH: Yes.

12 THE COURT: Thank you.

13 Mr. Loree I'll let you have a moment to read that.

14 MR. LOREE: Thank you, your Honor.

15 THE COURT: And then you'll just tell me when you're
16 ready.

17 MR. LOREE: OK.

18 (Pause)

19 MR. LOREE: Thank you, your Honor. I've had a chance
20 to review this. Would you like me to respond point by point?

21 THE COURT: I don't think it's necessary. I think
22 that your responses will be incorporated in your responses to
23 the questions I'll be asking you. So thank you.

24 As I understand it, sir, there are two parts to your
25 application and the first involves setting up a schedule for a

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1 motion to either bring new claims or to resurrect older claims
2 and then the second part of your application is to serve
3 certain document subpoenas.

4 Am I correct?

5 MR. LOREE: That's correct, your Honor.

6 I would say that probably the first part of the
7 application was the document subpoenas and the second was the
8 motion to reopen. We did make the application for the
9 additional limited discovery on the 9th.

10 THE COURT: Yes.

11 MR. LOREE: And were planning to make the other motion
12 this past week but then we heard of the conference and we
13 didn't want to presume to file it without having discussed it
14 with you.

15 THE COURT: That's precisely correct, sir.

16 The ordering that I got was from your letter to me of
17 November 2.

18 MR. LOREE: OK.

19 THE COURT: Where it began with the motion and then
20 proceeded to the document subpoenas.

21 For me it is easier, sir, to talk about them in that
22 order.

23 MR. LOREE: Sure.

24 THE COURT: So let me -- I know who Mahendra Shah is.

25 MR. LOREE: Yes.

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1 THE COURT: I do know who Sanjiv Chand is.

2 What do you consider to be the Chand LLC entities?

3 MR. LOREE: The Chand LLC entities are Kedis

4 Enterprises LLC.

5 THE COURT: Yes.

6 MR. LOREE: JMVD Hillside and 728 Melville Petro LLC.

7 So all three of those.

8 All three were original defendants in the case.

9 THE COURT: Well that's what we're going to review
10 right now, sir.

11 MR. LOREE: Exactly.

12 THE COURT: So, Mr. Chand was not named in any
13 complaint in this case.

14 Am I correct?

15 MR. LOREE: We did not make a claim against Mr. Chand
16 because at the time that we filed the complaint we had no idea
17 that he was going to submit an affidavit that was going to be
18 contradicted by the tax returns of Neminath and other evidence.

19 THE COURT: Sir, the question was so much easier than
20 that. Yes or no.

21 No, it was not included.

22 And in the first complaint none of those entities were
23 named.

24 In the first amended complaint which was the second
25 complaint in this case in March of 2015, also not named.

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1 In the second amended complaint filed May 5 of 2015,
2 728 Kedis, JMVD Hillside are named.

3 There is thereafter a motion to dismiss.

4 Actually before that there is a third amended
5 complaint -- oh, no. There's a motion to dismiss. That's
6 correct. But it's granted with leave to replead.

7 MR. LOREE: That's correct. That's when I became -- I
8 became involved in this case just before -- just when the
9 motion to dismiss the second amended complaint was ongoing and
10 we did ask for leave to file a third amended complaint and we
11 did so. And then there was a motion to dismiss.

12 THE COURT: Yes.

13 MR. LOREE: And as respects the LLC entities. That
14 motion was granted.

15 THE COURT: Yes, it was.

16 MR. LOREE: And in support of that motion Mr. Chand
17 submitted his third affidavit which contains -- at the time we
18 couldn't have known this, but as it turns out his statement
19 that the \$660,000 paid to I think two of the three LLC entities
20 was not in, as he said, discharge of an antecedent debt because
21 that very antecedent debt was not discharged until about two
22 years later. And that's supported by Mahendra Shah's tax
23 returns.

24 THE COURT: Sir, you are wandering very, very far
25 afield.

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1 MR. LOREE: I apologize.

2 THE COURT: I want to orient everyone in this room to
3 the concerns that I have.

4 MR. LOREE: OK.

5 THE COURT: With respect to Mr. Chand, Mr. Chand has
6 been named in no prior complaint. And, therefore, we are
7 talking about Rule 15, Rule 16, and Rule 21.

8 I don't at the moment have an understanding about why
9 everyone waited so long -- why you waited so long to include
10 him. And it's not clear to me because I think -- the thing
11 that I think that the folks at the front table are failing to
12 perceive with sufficient alacrity is that we are two months
13 away from trial with Mr. Shah at the back table and I don't see
14 how we can have a very quick motion to basically resurrect the
15 case as to half the folks against whom it's been dismissed.

16 So I'm trying to understand several things and I want
17 you to be very clear as you're speaking to me.

18 MR. LOREE: Sure.

19 THE COURT: I want to understand why this is happening
20 now rather than, for example, at the time of my initial motion
21 to dismiss opinion in July of 2016 or the several opinions
22 thereafter. I want to understand how this can happen
23 consistent with the trial schedule that has been set. I want
24 to understand the procedural vehicles that you think that I
25 need to use in order to do this and the bases that would permit

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1 me to do this and then, then we'll talk about the subpoenas.

2 So with respect to Mr. Chand, it's Rule 15 which is
3 leave to amend should be granted, as justice so requires, but
4 then there's 16 which says -- which requires good cause because
5 it's beyond many deadlines in this case. And I don't know how
6 it is that it's being brought up now.

7 MR. LOREE: May I explain?

8 THE COURT: Start with that, please. Yes.

9 MR. LOREE: Yes. OK.

10 First of all, we had no idea of -- that the statements
11 in Mr. Chand's affidavit were contradicted by Mahendra's
12 testimony and by the tax returns that Mr. Mahendra -- Neminath
13 subsequently produced.

14 THE COURT: Stop there. Mr. Mahendra Shah's testimony
15 was when?

16 MR. LOREE: That was in August 2017, your Honor.

17 THE COURT: So you've known since August of 2017.

18 MR. LOREE: Yes. Also, when this first came up in a
19 motion I said in that motion, I said it's too late probably to
20 bring all these other claims. We struggled with procedurally
21 how to protect our rights against the LLC defendants and
22 against Mr. Chand and what we had concluded was -- and this I
23 believe mentioned at the October 10 settlement conference --
24 what I concluded was that if we would make such a motion it
25 should be -- it could be that we just, when the judgment, the

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1 final judgment is entered against the LLC defendants it should
2 be without prejudice. That way if we want to -- if we sue the
3 LLC defendants in state court we won't -- the res judicata
4 argument should not be there.

5 I was concerned about that way back when we responded
6 to the subpoena, the motion to quash the subpoena that we
7 served on --

8 THE COURT: Williston Park.

9 MR. LOREE: Williston Park, correct.

10 That's what I said in the affidavit -- well I said in
11 the affidavit it was too late to bring them in but at least
12 this is relevant to -- it is relevant to Mahendra Shah and
13 perhaps others here because, for example, on the summary
14 judgment -- am I going too far afield?

15 THE COURT: No, you're fine.

16 MR. LOREE: OK. For example, in the summary judgment
17 motion with Mahendra Shah we had pointed all this out with
18 respect to the affidavit, with respect to how he should be
19 bound by tax estoppel and also the fact that he in the summary
20 judgment application said that -- attempted to explain away
21 this kind of glaring inconsistency between what Neminath says
22 in his tax returns and what he testified to in his deposition
23 and what Mr. Chand testified to way back in the third
24 affidavit. We think that that provides a basis also to create
25 at least a question of fact as to whether Mr. Chand --

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1 Mr. Mahendra, I should say, got any benefit out of this
2 660,000-dollar transfer.

3 THE COURT: OK. Let me understand. There is evidence
4 that you want me to consider in that regard. Part of it is
5 Mahendra Shah's deposition testimony from August of 2017. Part
6 of it is Mr. Chand's third affidavit which was submitted in
7 connection with the motion to dismiss practice in 2016.

8 MR. LOREE: Well that was summary judgment.

9 THE COURT: It was summary judgment.

10 MR. LOREE: Yeah.

11 THE COURT: So also 2017.

12 MR. LOREE: 2017, yes.

13 THE COURT: And the tax returns were produced in
14 discovery.

15 MR. LOREE: They were produced at the very end of
16 discovery which would have been -- it would have been before
17 our response -- it was shortly before we responded to the
18 motion to quash the subpoena.

19 THE COURT: Motion to quash -- sir, the motion to
20 quash the subpoena was September to October of 2017.

21 MR. LOREE: That's correct.

22 THE COURT: So that's when you received what? That's
23 when you received the Chand affidavit and the tax returns?

24 MR. LOREE: No, no, no. That's when we received the
25 tax returns and then in the tax returns really crystallized

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1 things for us then because, again, it's not just that the tax
2 returns show that the property was really sold for a little
3 over a million dollars, six hundred thousand dollars of which
4 was the debt that Mr. Chand claimed was discharged two years
5 previously. It also showed that Neminath paid interest on this
6 debt for those years.

7 I think, as we pointed out in our November 2
8 submission, that Mr. Chand or his LLC entities or both received
9 about \$1.5 million in consideration, ultimately in exchange for
10 a 600,000-dollar debt. And that's clearly a fraudulent
11 transfer.

12 THE COURT: But, sir, you have this information in or
13 about 2017. Does it make its way into your opposition
14 materials filed in January of 2018?

15 MR. LOREE: Absolutely.

16 THE COURT: All right. But then when I decide the
17 motion in July of 2018 there is no motion for reconsideration
18 on your part.

19 MR. LOREE: That's right. It was because -- again, at
20 that time we were struggling, how do we deal with this. I
21 don't always like -- we could have made the motion for
22 reconsideration, yes, but the court also has inherent power
23 under Rule 54(b) to reconsider a decision. And here with
24 respect to Mahendra, the main thing was -- would be bringing
25 him back in because he did receive or it's a question of fact

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1 that he must have received some benefit with respect to the
2 660,000. As respects the LLC defendants, however, that 14-day
3 deadline under the local rules had long since elapsed without
4 us having any idea that Mr. Chand's affidavit was in our,
5 according to the evidence as we look at it anyway, it would be
6 false.

7 THE COURT: But at no point during the summary
8 judgment -- at no point prior to your letter to me or to these
9 discussions about settlement when we had this settlement
10 conference did you suggest that the chart that Mr. Vanjani
11 prepared or the discussions about how things were reflected in
12 the tax returns were reasons to bring back in the LLC
13 defendants.

14 My concern, sir, is to the extent that there is an
15 application under Rule 59 or Rule 60, part of the analysis is
16 when did you have the information. And it looks like you had
17 the information in 2017.

18 So you're asking me a year plus after you've had it to
19 bring back these other entities into the case. Yes?

20 MR. LOREE: The answer to that is yes. But up until
21 the settlement meeting of October 10 our intention had been to
22 ask you to simply make any final judgment without prejudice to
23 the 660,000-dollar issue as respects the LLC defendants. Now
24 that wouldn't involve Sanjiv Chand at all. It involves the LLC
25 defendants. That would be how -- were we to sue him somewhere

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1 else we would -- he might say I was privy, you know, for
2 purposes of res judicata. So we -- this is where we were
3 thinking it was only after the discussion, really, we were
4 thinking about actually bringing him back in. There seemed to
5 be --

6 THE COURT: But, sir, you want to bring them back in
7 for this trial, do you not.

8 MR. LOREE: It would be for a trial. It wouldn't
9 necessarily have to be this trial. We're willing to --

10 THE COURT: I'll let you two have this discussion.

11 (Counsel and plaintiff confer)

12 MR. LOREE: I think Mr. Vanjani's perspective that's
13 what he would like. I would think from a procedural
14 perspective it would make more sense to -- to put the trial of
15 Mr. Vipin Shah off until we can try them both or just go ahead
16 with his trial and do it at another time.

17 THE COURT: Let's stop for a moment. I'm not trying
18 to be gruff here. I'm trying to understand something. Because
19 many curve balls have been thrown my way in your recent
20 submissions.

21 I've been preparing for a trial against a single
22 defendant. So has he. You're now saying I should put it off
23 so that he can sit at a table with a bunch of other people,
24 including his brother, and to do this again. But you're
25 telling me this several months after the summary judgment

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1 decision has issued.

2 I also wonder why you could not have told me at any
3 point prior to the fall of 2018 that my prior decisions in 2016
4 and 2017 should have been without prejudice because the
5 orders -- the decisions themselves would seem to suggest that
6 the dismissals of the LLC defendants were with prejudice; is
7 that not correct?

8 MR. LOREE: That is correct.

9 However, when there is a final judgment you have the
10 right to say well they are now without prejudice because under
11 54(b) for purposes -- I mean the judgment really -- actually,
12 you know, technically res judicata, at least in New York,
13 applies to judgments, not orders. So once the thing is in a
14 judgment, which it will be at some point.

15 THE COURT: Yes.

16 MR. LOREE: Then that part of the judgment, the
17 660,000 could be without prejudice to the LLC defendants. And
18 that would certainly solve any procedural problem of having --
19 to have either the defendants brought in very quickly and
20 forced to go to trial in January or it would certainly solve
21 that problem. It would certainly -- and it would certainly --
22 it would certainly allow the trial to go forward because it's
23 really -- this is something that need be done only at the final
24 judgment stage.

25 That was how, frankly, I was looking at it up until

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1 the conference. But in the conference -- and I know these
2 things are not -- obviously --

3 THE COURT: They were settlement discussions.

4 MR. LOREE: Exactly. And it seemed to us to be
5 some -- it seemed to us that that was something that you would
6 want to give serious consideration to. But if it's not because
7 of the delays and everything what we're saying is that what we
8 had envisioned would be making the judgment without prejudice.

9 THE COURT: But if I make the judgment without
10 prejudice what does that mean? Does that mean you're bringing
11 a lawsuit in state court against these entities? Does that
12 mean you're bringing another lawsuit here against these
13 entities? And if so, how are you not in serious -- is there
14 not a statute of limitations issue? Because if I dismiss
15 without prejudice I don't think there's any tolling for the
16 three years this litigation has been going on. So would not
17 those transfers be --

18 MR. LOREE: There's a six-year statute of limitations,
19 your Honor. So we would have the -- the transfers occurred in
20 2014. I think it was the first part of the year. So we'd have
21 until 2020, that's the six-year New York statute of limitations
22 that applies to a fraudulent transfer.

23 THE COURT: All right. I'm not saying I agree. I'm
24 coming to a point of pivoting.

25 Please understand that what I wish to do in this job

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1 and with respect to this case is to get it right. I wish not
2 to make improper decisions. I wish not to make the wrong
3 decision. Like any other judge worth his or her salt you don't
4 wish to get reversed.

5 But I've addressed this precise issue in the summary
6 judgment. And you never came back and said that I had
7 misperceived the evidence. And so I am -- and I hope this is
8 coming across. I am concerned about the amount of time that
9 has passed.

10 It's not clear to me that Rule 54 is the panacea that
11 you believe it to be. Because I've got 59 and 60, at least --
12 well, one of which has specific time deadlines and one of which
13 says -- uses the date of discovery of the information as a very
14 important factor.

15 So I'm just not -- I don't have the -- I don't believe
16 that I have the ability to do what you want me to do.

17 And I also am concerned that certainly you want to
18 have time to think about how evidence, what it means and how it
19 is -- how it fits into a greater, broader framework.

20 But I feel as though you've kind of kept these things
21 in your pocket for the last year plus as we've been resolving
22 other issues and to have them brought out now is something that
23 causes me concern.

24 You're saying to me, sir, that at the very time of the
25 motion to quash Williston Park you let me know that there was

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1 going to be an application at some later date to make this
2 without prejudice?

3 MR. LOREE: No. But what I did say, it was too late
4 to bring him in.

5 THE COURT: Right.

6 MR. LOREE: That was what I said.

7 THE COURT: And I don't know how it's any less late to
8 bring him in now.

9 MR. LOREE: As we said, the only reason that we would
10 bring -- we had a shift in the way we dealt with this was
11 because of the settlement conference. Otherwise -- we've been
12 struggling otherwise trying to come up with how can we do this
13 so we don't get into an unfair result with respect to res
14 judicata. And it seemed to us, initially when the summary
15 judgment opinion came out, we were thinking I guess we could
16 appeal this. Again, this is --

17 (Counsel and plaintiff confer).

18 I was talking about the -- at the time of the summary
19 judgment opinion.

20 THE COURT: Yes.

21 MR. LOREE: So what we need -- what we had decided
22 subsequent to that was well maybe to avoid a situation where,
23 as you said the court wants to get it right. I mean I didn't
24 want to even bring a motion to actually reopen because of the
25 timing until it seemed like there perhaps might be some -- you

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1 know the court might have some sympathy to that. That's not
2 binding at all.

3 THE COURT: You don't mean to use the word sympathy
4 because I don't make decisions based on sympathy.

5 MR. LOREE: That's right, your Honor.

6 THE COURT: What is the evidence that you would
7 suggest -- let me finish -- for a basis or bases for allowing
8 these people in?

9 You're going to say look at Chand's affidavit, look at
10 Mahendra Shah's testimony and look at the tax returns. And
11 putting those three things together somebody must be lying,
12 correct?

13 MR. LOREE: Well, I think if you look at all the
14 evidence it's that -- yeah, there's a question of fact as to --
15 in other words, the prior decision has taken the view that this
16 \$660,000 transfer was for antecedent debt.

17 THE COURT: Yes.

18 MR. LOREE: But based on what was before the court in
19 summary judgment, we think that there was a question of fact.
20 We also think that -- if it's true that our version of the
21 facts is correct, that it was Mr. Chand who lied to the Court,
22 then -- and there's a lot of evidence I would suggest that that
23 is.

24 THE COURT: Sir, at most what you have is some
25 evidence suggesting that as to that six hundred thousand dollar

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1 transfer, that the bases proffered by Mr. Chand to Mr. Shah,
2 Mahendra Shah, were false.

3 But I don't see you -- or at least I don't see that
4 there's a basis to challenge, for example, the Robinson Brog
5 transfers. We're not redoing those.

6 MR. LOREE: No. It's only the 660,000.

7 THE COURT: That's it.

8 MR. LOREE: As respects Mahendra and as respects the
9 LLC defendants, yes.

10 THE COURT: Wait. What else are you thinking about
11 bringing back into the case?

12 For example, are there other Chand transfers that you
13 believe -- it's just the 600,000 that --

14 MR. LOREE: It was just the 660,000-dollar transfer.

15 THE COURT: All right. I'm not -- all right. I'm
16 saying all right to note understanding.

17 MR. LOREE: We understand.

18 THE COURT: So STI, NYC telecom, you're not fighting
19 those in this motion?

20 MR. LOREE: Not in this motion, your Honor.

21 THE COURT: That's subject for later appeal.

22 And then is that Mahendra Shah, you're saying he
23 should be in -- because this is the problem. I guess the
24 evidence that you have, your best argument, is not that
25 Mahendra Shah himself got money, it's that Neminath got money.

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1 MR. LOREE: No, your Honor. Because what
2 Mahendra Shah did, he did in his capacity, ostensibly in his
3 capacity as the CEO of Jaina. He made these transfers. And if
4 you look at his tax returns, his testimony, all of this, except
5 for when he finally tried to back away from it later at summary
6 judgment by saying he didn't know that he actually sold the
7 property for four hundred thousand and change rather than a
8 million and change, which is -- sounds kind of implausible.
9 But all of that evidence, it shows that he made this transfer
10 for no consideration. It was money he took out in change
11 because he knew that there was a judgment pending against Jaina
12 and we think parked it with Chand's LLC entities. And even in
13 Chand's affidavit he says that it was Mahendra Shah who made
14 the transfers. There is no question about that.

15 Then the question is OK well there has to be some
16 benefit under New York law. That was something that we
17 briefed. You had also, quite correctly, pointed out in your
18 opinion.

19 This is the sort of thing where there must have been a
20 benefit because why would he take \$660,000 out of Jaina and
21 transfer it to somebody else for no consideration?

22 THE COURT: But this is the argument we were talking
23 about because how I responded to that was by saying that it was
24 also illogical by saying that someone who was a shareholder of
25 Jaina would want Jaina to fail.

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1 MR. LOREE: If you look at the facts as a whole, Jaina
2 was faced with this debt and some other debts but certainly
3 this debt. And I think that these -- we think that these --
4 Mahendra Shah and Mr. Vipin Shah and others ran off, stole not
5 only that money but quite a bit more.

6 THE COURT: But you have no evidence of it.

7 MR. LOREE: We have lots of evidence. We can get even
8 more evidence that, from our cash flow analyses and also more
9 recently Mr. Vanjani did a whole analysis.

10 THE COURT: None of which was given to me in
11 connection with the summary judgment motion. None of which was
12 given to me in connection with the summary judgment motion.

13 MR. LOREE: Not of the most recent thing. But we did
14 give you and you did -- you mentioned it too, was the -- was
15 Mr. Vanjani's analysis of cash flow showed about \$6 million
16 that was unaccounted for. We have evidence that buttresses
17 that, that makes that original evidence more powerful and more
18 persuasive, we think, although even with that evidence -- so
19 what benefit does he get as a shareholder? He gets a benefit
20 if he could take as much money from the company and appropriate
21 it to his own account. And he has a bunch of other -- there
22 are a bunch of other Jaina-related entities that we've referred
23 to from time to time. And there's evidence that even -- back
24 in 2012 that some \$4.6 million was transferred to them. And
25 we've asked for the bank statements for these entities in

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1 discovery and we haven't received them at least.

2 So I think with some help with the subpoenas I think
3 we might be able to make that showing.

4 THE COURT: Well that's another issue that we'll talk
5 about momentarily.

6 Right now the most that you can hope to obtain from me
7 today on this issue is permission to file your motion. The
8 real issue is were you to file that motion it is not clear to
9 me that Mr. Vipin Shah has, to use the colloquialism, a horse
10 in that race. I don't know that it matters. You're not
11 speaking specifically about him. You're speaking about
12 individuals who would -- who should themselves have an
13 opportunity to speak.

14 I'm not saying I'm going to permit this, but were I to
15 it would be really more on the order of an order to show cause
16 directed to Mahendra Shah and to the representatives for the
17 corporate entities of Mr. Chand indicating why I got it right
18 the first time and why these things should not be reopened.

19 But I'm not sure that Vipin Shah is in the best
20 position to speak to whether it should be reopened as to these
21 individuals or not.

22 Mr. Vipin Shah has, I imagine, concerns about the
23 delay of his trial date and about the resolution of that and
24 the evidence at that trial. But I'm not sure that he would
25 have something to say about this.

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1 I'll ask you to sit down for a moment, Mr. -- perhaps
2 both Mr. Shahs can stand.

3 Mr. Vipin Shah, have you been able to follow the
4 discussions that I've been having with Mr. Loree this
5 afternoon?

6 MR. VISHAL SHAH: So he understood most of it but
7 there's still some questions he had. Would you be able to just
8 maybe summarize it in a couple sentences, if possible?

9 THE COURT: Yes. I've been reviewing with Mr. Loree
10 the procedural history of this case, the complaints that were
11 filed and the parties that were named.

12 I've also been discussing with him the opinions that
13 I've issued on two prior motions to dismiss and a motion for
14 summary judgment.

15 What I've been asking him was how, under the Federal
16 Rules of Civil Procedure, the rules that govern what I do, how
17 these entities that he wishes to be brought into the case can,
18 in fact, be brought into the case.

19 It is not as though I have -- I can waive my gavel and
20 someone comes immediately, gets on the caption of the case.
21 There are rules that govern the circumstances under which
22 someone could be brought back into the case. And that's what
23 he and I have been discussing.

24 Now, the most recent -- so are you following me, what
25 I've just said so far?

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1 MR. VISHAL SHAH: Sorry.

2 THE COURT: Sit down for a moment and talk to him and
3 then talk to me about what he does not understand. I cannot
4 provide him legal advice but I can make sure what I'm saying to
5 him is at a level he can understand.

6 (Vipin Shah and Vishal Shah confer).

7 THE COURT: Mr. Shah, have you finished?

8 MR. VISHAL SHAH: Yes. He understood that part that
9 we just talked about.

10 THE COURT: OK. Thank you.

11 So let me continue.

12 The issue that I was raising most recently with
13 Mr. Loree was whether, if Mr. Loree and his client were
14 permitted the opportunity to move to add in these other parties
15 who would oppose the motion? Someone might -- there should be
16 someone speaking for the individuals in question. So your
17 father, Mr. Vipin Shah, may feel -- may object -- and I'd
18 certainly hear from him on the grounds that it would cause
19 delay or on the grounds that -- for some other reason that he
20 might think about. I don't want to give him reasons, of
21 course. But I don't think Mr. Vipin Shah could speak
22 meaningfully to reasons why Mahendra Shah might not want to be
23 brought into the litigation again or why Mr. Chand might not
24 want to be brought into the litigation in the first instance.

25 So what I was saying was, if I were to permit this,

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1 and that is the question that we were discussing, I would think
2 that the fairest thing would be to allow the individuals who
3 are proposed to be brought back in to have an opportunity to
4 speak, additional to your father.

5 Do you understand -- does he understand that? And do
6 you want to check with him?

7 MR. VISHAL SHAH: Let me just --

8 THE COURT: Please do.

9 (Vipin Shah and Vishal Shah confer)

10 MR. VISHAL SHAH: Would I be able to stand outside to
11 talk about it or would it be --

12 THE COURT: I'll allow a break for five minutes and
13 then we'll come back.

14 (Recess)

15 THE COURT: May I hear from the folks at the back
16 table? Have you had a chance to discuss things?

17 MR. VISHAL SHAH: Yes. Thank you for the opportunity.

18 THE COURT: Of course. And what would your father
19 like me to know, sir?

20 MR. VISHAL SHAH: Regarding the -- is this regarding
21 the motion that he would like to file?

22 THE COURT: Yes. I thought where I left you was that
23 we were talking about the fact that if the plaintiff was able
24 to file a motion I'm questioning who would be the appropriate
25 group of people to answer the motion and that while your father

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1 may have things that he might want to say others might want to
2 be heard as well.

3 Did you understand that, sir?

4 MR. VISHAL SHAH: Yes. I explained that to him.

5 THE COURT: And does your father agree with the
6 argument that I am making?

7 MR. VISHAL SHAH: Yes.

8 THE COURT: Are there other things that he would like
9 me to know and is asking you to tell me?

10 MR. VISHAL SHAH: For the most part he's kind of said
11 everything that he wanted to say in that letter that he sent
12 you. And I think he just wants to reiterate that fact that
13 it's just -- this trial has been going on for a really long
14 time.

15 THE COURT: This case has been going on for a long
16 time. Haven't had a trial yet.

17 MR. VISHAL SHAH: This case has been going on for a
18 really long time.

19 THE COURT: Sir, just to push back, a large chunk of
20 that delay was occasioned by his bankruptcy and the need to
21 resolve that before the case could be reopened again. So I
22 don't fault the gentlemen at the front table for that delay.
23 Other delays were occasioned by the motions that he filed and
24 my need to have time to resolve them. So I don't think it's
25 been a wasted effort. It has been going on for a while but in

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1 part because of his own conduct.

2 MR. VISHAL SHAH: I'm not saying that it's anyone's
3 fault.

4 THE COURT: There is no fault.

5 MR. VISHAL SHAH: It's just been a long, I guess,
6 case. And that's just kind of what he wanted to reiterate.
7 And he's ready to get this over with and we're just awaiting a
8 trial. So any new evidence we'd have to, for us it would be a
9 larger I guess effort to kind of understand it and prepare for
10 it. Which I think the manpower is just me, my brother, and my
11 dad. So just for us it would just be a monumental effort to
12 understand it and even if there were brought in -- I don't know
13 what we would do with that information or how to prepare for
14 that case or a trial.

15 THE COURT: One moment, please, sir.

16 Mr. Vipin Shah you were able to hear your son speak to
17 me?

18 MR. VIPIN SHAH: Yes.

19 THE COURT: And, sir, your son has communicated to me
20 what you wanted to say to me?

21 (Vipin Shah and Vishal Shah confer).

22 THE COURT: Is that correct, sir?

23 MR. VIPIN SHAH: Yes.

24 THE COURT: Thank you very much. You can both be
25 seated.

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1 Mr. Loree, let's turn to the second part of your
2 application, sir, which is the request for additional document
3 subpoenas. Are these all on entities who have not been brought
4 into this case at any point in time? They're all --

5 MR. LOREE: They're all on nonparties, yes.

6 THE COURT: There was a discovery schedule in this
7 case, was there not, sir?

8 MR. LOREE: There was, your Honor. That's correct.

9 THE COURT: And was there anything that prevented you
10 from serving document subpoenas or deposition notices on any of
11 these nonparties during the period the discovery was open?

12 MR. LOREE: No, your Honor.

13 THE COURT: Why then should we be reopening discovery
14 now, sir?

15 MR. LOREE: Well we're not really asking to reopen
16 discovery. All we --

17 THE COURT: Are you committing to me that the
18 information that you obtain from these subpoenas will not be
19 used against Vipin Shah in any way?

20 MR. LOREE: No, no, no. That's not what I'm saying.

21 THE COURT: Then I'm reopening discovery.

22 MR. LOREE: You could have a situation where somebody
23 submits a subpoena duces tecum for production at trial. We're
24 making very specific requests here and we've made them because
25 we've been stonewalled by the defendants in a very big way,

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1 including what you just recently heard back in terms of the
2 proposal that was being vetted. We wanted additional
3 information.

4 THE COURT: And Mr. Vipin Shah said he had no
5 additional information to give you.

6 MR. LOREE: Yeah, except that -- what he's saying
7 doesn't make much sense when you look at the documents, a lot
8 of which were cited in our discovery motion and in the
9 correspondence which preceded it.

10 He says I'm not an officer or director of the company.
11 But why then is he receiving these e-mails about -- that have
12 to do with Jaina's operations and particularly when Jaina's
13 involved in -- Jaina's involvement in this very dispute even.
14 He's constantly. He's all over the place there. It's just
15 unbelievable.

16 THE COURT: Sir, with respect to the entities, the
17 nonparties with whom you wish to seek discovery.

18 MR. LOREE: Yes.

19 THE COURT: When did you learn of the identities of
20 those parties?

21 MR. LOREE: Well we would have learned the identity of
22 the accounts and discovery --

23 THE COURT: Let me try it a different way, sir.

24 At the time that the complaint was filed did you know
25 about the Neminath entity?

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1 MR. LOREE: At the time the original complaint was
2 filed?

3 THE COURT: Yes.

4 MR. LOREE: I don't know that.

5 THE COURT: By the time of summary judgment, by the
6 time discovery had closed you knew about it?

7 MR. LOREE: Oh, absolutely, I knew about the Neminath
8 entity and we subpoenaed the Neminath entity.

9 THE COURT: And you knew about the banks?

10 MR. LOREE: We did know about the banks and, in fact,
11 we subpoenaed Citibank and there was documents -- apparently
12 documents were lost in the mail. Citibank has informed me that
13 they would accept service of another subpoena.

14 Frankly, the subpoena we served then was a lot broader
15 than one we would serve now

16 THE COURT: Sir, NRM Holdings, when did you know about
17 that?

18 MR. LOREE: May I ask Mr. Vanjani?

19 (Counsel and plaintiff confer)

20 THE COURT: Sir, none of this is on the record you
21 understand?

22 MR. LOREE: NRM Holdings, we learned of the existence
23 of an LLC in discovery. And we asked every single one of the
24 witnesses about it. And everybody denied any information about
25 what the letter of credit was.

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1 We didn't even know where they got it from because it
2 doesn't say that in discovery.

3 What happened was after that point Mr. Vanjani
4 canvassed through all the bank records and was able to find
5 \$337,000 of payments made to NRM Holdings. And then by
6 crosschecking that NRM Holdings, as it turns out, is a company
7 that does finance, including letters of credit, and arranges
8 for letters of credit through banks for companies like Jaina
9 who were having financial difficulties.

10 So it seems pretty clear to us that they issued this
11 letter of credit.

12 What is very frustrating is how Mahendra Shah has
13 claimed he never knew of any LLC even though it's right there
14 in the correspondence, how Mr. --

15 THE COURT: But, sir, you had it at the time of his
16 deposition, did you not?

17 MR. LOREE: That correspondence?

18 THE COURT: You had whatever bank record made
19 reference to NRM Holdings at the time of his deposition?

20 MR. LOREE: We would have had that, yes, your Honor.

21 THE COURT: And you never -- please stop talking over
22 me.

23 MR. LOREE: I am sorry, your Honor. My apologies.

24 THE COURT: You never confronted him with this
25 information?

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1 You never asked him to explain the inconsistencies
2 between his testimony and what was contained in those records;
3 is that correct?

4 MR. LOREE: Well we showed them what little evidence
5 we had of this LLC.

6 THE COURT: Yes.

7 MR. LOREE: And they denied that such an LLC ever
8 existed.

9 THE COURT: When Mr. Vanjani found the evidence of the
10 transfers, was he reviewing documents that you had received in
11 discovery?

12 MR. LOREE: Yes, your Honor.

13 THE COURT: And they were documents that you had in
14 your possession, custody or control at the time of
15 Mahendra Shah's deposition?

16 MR. LOREE: Yes, your Honor.

17 THE COURT: And so you could have, had Mr. Vanjani had
18 the good fortune to look at them a little bit earlier, you
19 could have questioned Mr. Mahendra Shah about them at that
20 time, could you not?

21 MR. LOREE: I think in theory, yes. But in the
22 reality of it is, is that we were -- we didn't -- we wanted to
23 know what this -- information about this LLC. And then they
24 told us they knew nothing, which we think is not true and the
25 only --

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1 THE COURT: There was nothing that prevented you in
2 2016 and -- in 2017 from issuing a subpoena to NRM Holdings,
3 correct?

4 Nothing stopped you?

5 MR. LOREE: There's nothing that prevented us from
6 doing that, your Honor, no. It's the kind of thing -- it's the
7 kind of thing that -- very cramped discovery period.

8 THE COURT: It wasn't that cramped.

9 MR. LOREE: All right. But still it was not something
10 that we were able to put together all the -- cross the Ts and
11 dot the Is on. And we -- everybody was denying the existence
12 of this thing.

13 THE COURT: I understand that. But you did not
14 believe them. So I'm just not sure why you couldn't have done
15 something back then to address it.

16 And the same thing with the accountants. Did you not
17 know of the accountants' identities in 2017?

18 MR. LOREE: We did know back in 2017, at least after
19 Mahendra's deposition we would have -- actually that may not be
20 true as respects Bose because I don't think we knew about Bose
21 until we got the Neminath tax returns and by the time I got
22 that, that was after the discovery period.

23 THE COURT: And you never asked me at any point before
24 now to reopen discovery because of the finding of tax returns
25 that suggested that deposition testimony you had obtained was

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1 false?

2 MR. LOREE: That's correct.

3 THE COURT: Sir, you know where I'm going with this.
4 I'm finding out months after the summary judgment motion has
5 been decided that you want to issue all of these nonparty
6 subpoenas. Your expectation, I presume, is for use at any
7 trial we might have. But that's what I had discovery for. So
8 it's not clear to me that it is appropriate to reopen
9 discovery. You're not foreswearing their use against Mr. Vipin
10 Shah. You're not foreswearing their use against anyone. And I
11 don't understand why it was that these things weren't found out
12 about, weren't investigated during the course of discovery.

13 I appreciate that there was a stay for a period of
14 time. And I think the stay was for about five months
15 duration -- six months duration. But there was time on either
16 side of this stay to address discovery issues.

17 The case management plan was filed on September 14 of
18 2016. The application for a stay was January of 2017. So
19 there were a period of months where things could have been
20 done. And I'm just not sure -- I don't find that an especially
21 compressed time schedule.

22 After the stay was lifted, I believe there was -- I
23 wanted to understand what discovery was left. So I'm having
24 difficulty understanding why I should reopen discovery.

25 Now, I appreciate there is always the very important

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1 ends of justice or you know justice requires it. But I don't
2 get the sense that you were prevented from obtaining or
3 learning about this information during the course of discovery.
4 So I'm not sure why you're asking for it now.

5 MR. LOREE: May I just --

6 THE COURT: You may.

7 (Counsel and plaintiff confer)

8 THE COURT: Mr. Loree.

9 MR. LOREE: Could I have the question back, so to
10 speak.

11 (Record read)

12 MR. LOREE: We're asking for it now because a lot of
13 it is -- is pertinent to Vipin Shah's trial. What is this
14 whole issue of additional paid in capital which we've asked
15 about. And, again, we didn't get any answers that were useful
16 in discovery.

17 And, you know, I suppose in a perfect world if we had
18 thought we had time to go straight after the accountants.
19 Maybe that would work; maybe it wouldn't. But it seems to us
20 that this is -- there aren't going to be any surprises I don't
21 think in any of this discovery that we're asking from, you
22 know, any surprises to Mr. Shah because Mr. Shah, he's -- he
23 claims to not know what the facts are, he says he doesn't have
24 any documents. So we would find documents that would show that
25 Mr. Shah is not being truthful to the Court or, you know, we're

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1 going to find that Mr. Shah is right.

2 THE COURT: The point, sir, is -- the surprise is that
3 I thought we had an understanding of the universe of materials
4 that were going to be used at the upcoming trial and now what
5 you're saying to me is you'd like to disturb that understanding
6 by trying again to find discovery when these things could have
7 been done during discovery and could have been done prior to
8 the summary judgment motion.

9 There is a certain amount of gambling that you did in
10 not seeking this information prior to the summary judgment
11 motion because had I granted it as to Mr. Vipin Shah there
12 would be no trial and I'm not sure what would be said then,
13 unless very quickly thereafter you were suddenly to find this
14 information.

15 So I hear what you are saying, which is that trial
16 subpoenas have existed for a long time and that this is what
17 they are there for. But I'm just questioning whether it is
18 appropriate to have that discovery so close to the trial date.
19 That is my question.

20 MR. LOREE: The answer would be that it wouldn't
21 prejudice Mr. Shah. I mean it's not like -- we're limited with
22 what we want, to specific things which are for the most part --
23 I say for the most part because there's also some of the
24 information that would relate to bringing in the LLC defendants
25 again.

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1 But we're asking for relatively limited information
2 that everybody but the other defendants just haven't produced
3 those, have sworn that they don't have. Nobody has it. And it
4 seems to us that whatever -- a little bit of extra burden it
5 might be placed on Mr. Shah would be outweighed by the Court
6 really having the benefit of knowing what the facts really are
7 in this situation.

8 So that's why we would look at it not so much -- I
9 guess it is, as you say, opening discovery because it is
10 something that we would use at trial if we get information that
11 we can use, but it has been a very frustrating situation for us
12 to deal with witnesses who are denying that -- Mr. Shah denies
13 this he even knows what a receivable is.

14 THE COURT: Other than Williston Park were there
15 motions to compel during discovery?

16 MR. LOREE: Well we didn't make motions to compel as I
17 mentioned because you make a motion to compel and you got the
18 other side who has already testified in the deposition that
19 that's all they have, you know, it doesn't give you much for a
20 basis for a motion to compel. Like you said, it's proving a
21 negative.

22 So, yes, in a perfect world we certainly would have
23 tried to go after the accountants and but not for limited
24 information like the additional paid-in capital which seems to
25 be a very close number to what Mr. Shah is claiming is a loan,

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1 is a very potentially critical -- very critical issue.

2 With respect to the banks, with respect to Citibank we
3 did ask for a lot of things. It was lost in the mail. And
4 they're willing to produce it if --

5 THE COURT: When did you know that Citibank -- your
6 requests of Citibank were lost in the mail?

7 MR. LOREE: It was served on the -- I think the very
8 end of the discovery period and it was supposed to be produced
9 by 14 to -- let's say 30 days after that.

10 THE COURT: Did you speak with them back then?

11 MR. LOREE: I didn't speak with them until relatively
12 recently, your Honor.

13 I did speak, trying to track it down and otherwise,
14 but those efforts were unavailing. We, over a month of having
15 discussions withstanding, at least e-mails back and forth.
16 They've now agreed that they can give us the stuff, just give
17 us another subpoena. We'll accept service -- serve one of our
18 branches and just e-mail it to me and I'll get it as quickly as
19 possible. And I think that's a reasonable position for them to
20 take and that's where we are with that.

21 Even if you're not prepared to grant any of the other
22 discovery if you would at least let us get what we intended to
23 provisionally get we would greatly appreciate that.

24 THE COURT: Something else you want me to know, sir?

25 MR. LOREE: No, your Honor.

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1 THE COURT: Thank you.

2 Mr. Shah, do you wish to be heard on this issue or do
3 you want to rest on what's in your written letter to me?

4 (Vipin Shah and Vishal Shah confer).

5 MR. VISHAL SHAH: Sorry. I have a question if that's
6 OK.

7 THE COURT: Yes, sir.

8 MR. VISHAL SHAH: Regarding the receiving all this
9 information, is that going to I guess move the trial date any
10 further than it is now?

11 THE COURT: There is a possibility that were I to
12 grant their application, either of the applications that
13 they've made to me this afternoon that would have an effect on
14 the trial date. And I am understanding that the position of
15 the folks at the back table is that you don't want the trial
16 date to move.

17 MR. VISHAL SHAH: Yes. That is correct.

18 THE COURT: Understood.

19 Anything else, sir?

20 MR. VISHAL SHAH: I think our position is basically we
21 don't want to move the trial date. That's the reason we're
22 objecting to all the motions and the subpoenas.

23 THE COURT: OK. Thank you very much.

24 Mr. Loree, do you want to be heard in reply?

25 MR. LOREE: Yes. Thank you, your Honor.

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1 It seems to us that if the application is for
2 reopening so to speak is limited to the -- to a judgment and a
3 final judgment without prejudice that shouldn't delay the trial
4 date. It might delay a little bit the actual decision on the
5 trial. I don't know. But I think there's no reason that
6 should delay the trial.

7 So in terms of the discovery I don't see why that
8 would necessarily delay the trial either unless everybody --
9 unless we're going to have all these objections to it.
10 Citibank is not going to object to it. But maybe the
11 accountants would. We get the documents and get them quickly.
12 We know what we're looking for. And it's pretty limited as
13 respects -- particularly as respects dealing with, with
14 Mr. Shah, Mr. Vipin Shah. So there really shouldn't be a delay
15 there.

16 And the other thing is also, and I think -- correct me
17 if I'm wrong but I think you were concerned in terms of our --
18 we'll call it the application to reopen even though -- what I
19 mean by that is it could be the application to have a judgment
20 without prejudice with respect to 660,000.

21 I think you were concerned in terms of how people
22 would I guess have notice of that motion so that they could
23 respond to it.

24 THE COURT: Yes.

25 MR. LOREE: And I think even through ECF I mean all

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1 these people are still --

2 THE COURT: Their attorneys are terminated in terms of
3 receiving ECF notices.

4 MR. LOREE: Really? Because all the ECF notices I
5 have seen have been sent to all these people, every one of
6 them, and including Mahendra Shah, including -- and if that
7 were -- we could -- we could do personal service on the
8 attorneys or even on the LLC defendants if the Court will grant
9 us the permission to make this motion.

10 And even if we do that I don't think that -- that's
11 going to delay the trial. Maybe it could be a little bit of
12 delay in terms of the ultimate final judgment but not the
13 trial. I hope, anyway, your Honor.

14 THE COURT: I won't commit either way.

15 Mr. Loree, I want you, please, to obtain a transcript
16 of this proceeding.

17 MR. LOREE: Yes.

18 THE COURT: With whatever speed you think is
19 appropriate. I want to read this after today and I will then
20 let the parties know either telephonically or in an order what
21 my decision is on the two motions.

22 And I understand the Shah defendant position that the
23 trial date is something he wishes not to move.

24 I understand as well the options that plaintiff's
25 counsel has offered to me about how to effect the first

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1 application that is being made.

2 MR. LOREE: Thank you.

3 THE COURT: Other things you'd like me to know, sir?

4 MR. LOREE: At this point --

5 (Counsel and plaintiff confer)

6 MR. LOREE: I think we're good, your Honor.

7 THE COURT: Thank you.

8 MR. LOREE: At the risk of -- I hope my client is not
9 going to be upset with me.

10 THE COURT: I'm sure he won't.

11 MR. LOREE: I think we've covered the list.

12 THE COURT: Mr. Shah, anything else you'd like me to
13 know?

14 You're welcome to sit down, Mr. Loree.

15 MR. LOREE: Thank you, your Honor.

16 MR. VISHAL SHAH: I think for the most part everything
17 we've wanted to say we've said it in a letter we gave to you.
18 I guess you received earlier today. And my dad just wanted to
19 mention or reiterate that he would like an interpreter for the
20 trial.

21 THE COURT: He would like what please?

22 MR. VISHAL SHAH: Interpreter.

23 THE COURT: An interpreter. We don't provide --
24 that's actually -- in noncriminal cases that is provided by the
25 parties themselves. We don't have -- the court does not

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1 provide interpreters.

2 MR. VISHAL SHAH: Got it. So we'll make a note of
3 that. Thank you.

4 THE COURT: Thank you very much.

5 MR. LOREE: Your Honor, can I just confer with my
6 client on the interpreter issue?

7 THE COURT: Yes.

8 (Counsel and plaintiff confer)

9 MR. LOREE: Mr. Van -- in terms of the whole
10 interpreter issue, we do have a concern about how that affects
11 the trial, how long it's going to take. I've had situations in
12 civil cases and arbitrations with Japanese witnesses. I've had
13 situations where I've had to prepare them with interpreters
14 because I don't speak Japanese and there's a big delay, number
15 one, in which it's difficult. I'm sure you're well aware of
16 all of this from personal experience.

17 But in this case Mr. Vanjani has known Mr. Shah for
18 many years and as I understand you -- correct me if I'm wrong,
19 Mr. Vanjani -- that you always had all your dealings with
20 Mr. Shah in English, no?

21 MR. VANJANI: That's correct. His kid is having the
22 conversation in English.

23 THE COURT: I'm not listening to it but I --

24 MR. LOREE: He's right. I hear them talking to each
25 other in English. So I have to question whether there's a

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1 necessity for an interpreter and if there has to be an
2 interpreter we certainly don't want to have to, you know, be
3 footing the bill for any part of that.

4 THE COURT: No. In cases that I have had where
5 interpreters are required either for witnesses or for litigants
6 on the civil side that bill has been paid by the individual who
7 needs the interpreter. It's in criminal cases where there's an
8 obligation to provide one, not in civil.

9 MR. LOREE: Thank you, your Honor. That makes a lot
10 of sense.

11 But again there's that issue which is not an issue as
12 you pointed out.

13 But there's also the issue of whether is this really
14 necessary because if it's not necessary there's going to be a
15 lot -- I think things will proceed more expeditiously or maybe
16 something -- there could be, we could have a middle ground
17 where there's an interpreter present but only use the
18 interpreter if there's really a need for it, for her or him.

19 THE COURT: Understood.

20 MR. LOREE: Thank you, your Honor.

21 THE COURT: All right. Thank you very much. We are
22 adjourned.

23 (Adjourned)
24
25